



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

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September 19, 2005

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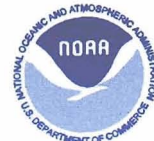
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Re: Initial Administrative Determination about the State of Alaska's Percentage Allocation Recommendations for Eastern Aleutian Islands Golden King Crab and Adak Red King Crab and Associated Amendments to the 2003-2005 Community Development Plans under the Western Alaska Community Development Quota Program

Dear Sirs:

This letter constitutes an initial administrative determination (IAD) about the State of Alaska's (State's) July 14, 2005, percentage allocation recommendations for Eastern Aleutian Islands (EAI) golden king crab and Adak red king crab and the associated amendments to the 2003-2005 Community Development Plans (CDPs) under the Western Alaska Community Development Quota (CDQ) Program. The State and any and all of the CDQ groups may administratively appeal this IAD to the National Marine Fisheries Service (NMFS) Office of Administrative Appeals by October 19, 2005, following the procedures described in Attachment 1.

For the reasons described below, NMFS *initially disapproves* the State's recommendations about the 2005 percentage allocations of these two crab CDQ reserves to the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDCC), and the Yukon Delta Fisheries Development Association (YDFDA), and proposed amendments to the 2003-2005 CDPs for these six CDQ groups. This initial determination is based on my findings that the State did not provide a reasonable explanation for its recommendations as required by 50 CFR 679.30(d). Specifically, the State's rationale does not demonstrate that the State applied all of the evaluation criteria that it said that it focused on in its allocation recommendation, and the State did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group.

Introduction

The 2003-2005 percentage allocations for groundfish, crab, halibut and prohibited species and the associated CDPs were approved by NMFS on January 17, 2003. On March 2, 2005, NMFS published a final rule that added two new crab species allocations to the CDQ Program: EAI golden king crab and Adak red king crab (70 FR 10174). The final rule provided for a 10 percent allocation of the annual total allowable catch of these two crab species to the CDQ Program as "CDQ reserves." On July 29, 2005, the State announced the total allowable catch (TAC) and season dates for EAI golden king crab and established the 2005 CDQ reserve for EAI golden king crab as 300,000 pounds. The State has not yet issued an announcement about whether a TAC and fishing season will be established for Adak red king crab in 2005. Although the allocation of 10 percent of the EAI golden king crab and Adak red king crab TACs to the CDQ Program is established through federal regulation, further allocation of the CDQ reserves among the CDQ groups requires administrative action by the State and NMFS under 50 CFR part 679 and other applicable federal law.

On July 14, 2005, the State submitted to NMFS its recommendations about (1) approval of percentage allocations of EAI golden king crab and Adak red king crab among the six CDQ groups for 2005¹, and (2) approval of “all six Community Development Plans (CDPs) submitted to the State for the new 2005 crab species.”

The State recommended the following percentage allocations among the CDQ groups:

CDQ Group	State’s Recommended Percentage Allocations	
	EAI Golden King Crab	Adak Red King Crab
APICDA	8%	8%
BBEDC	18%	18%
CBSFA	21%	21%
CVRF	18%	18%
NSEDC	21%	21%
YDFDA	14%	14%

Standard of Review for the State’s Recommendations

NMFS's role in the CDQ Program allocations is defined by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (groundfish FMP), the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP), and regulations at 50 CFR part 679 implementing the CDQ Program. The MSA requires that the North Pacific Fishery Management Council (Council) and NMFS establish the CDQ Program and allocate a portion of the quotas from Bering Sea fisheries to the program. In addition, the MSA provides the criteria for communities to be eligible for the CDQ Program. However, the MSA does not specifically instruct the Secretary to allocate CDQ to eligible communities or to CDQ groups, nor does it contain requirements about how allocations of quota to the eligible communities should be made.

The groundfish FMP states that the CDQ Program is a joint program of the Secretary and the Governor of the State of Alaska. It also requires that portions of the quota allocated to the CDQ Program are to be released by NMFS to “eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use.” The crab FMP provides for an allocation of crab to the CDQ Program and states that the “program will be patterned after the pollock CDQ program.”

Regulations at 50 CFR Part 679 implementing the CDQ Program were developed by the Council based on recommendations by the State. As intended by the FMPs, these regulations place the primary responsibility with the State for recommending CDQ allocations and day-to-day

¹ The 2005 crab fishing year is from July 1, 2005, to June 30, 2006. The 2005 season for EAI golden king crab is August 15, 2005, through May 15, 2006. Whether a 2005 Adak red king crab fishery will occur and, if it does, the season dates, have not yet been announced by the Alaska Department of Fish and Game

administration of the CDQ Program. Additionally, should NMFS determine that a regulatory requirement has not been met by the State in developing its CDQ allocation recommendations or that the State's rationale is not reasonable or does not support the State's recommendations, NMFS is not provided the regulatory authority to implement CDQ allocations on its own. The allocation recommendations must be returned to the State for further development or revision. For these reasons, NMFS interprets its standard for reviewing State CDP and allocation recommendations as an abuse of discretion standard rather than an independent or *de novo* review of the record.

The role of NMFS in review and approval of the CDPs and the allocation of quota to the eligible communities is limited by regulatory design to conducting a careful inquiry of the record provided by the State for its recommendations and to determining whether the State considered relevant factors and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the recommendations made by the State. NMFS must approve the State's recommendations if it finds that the State followed the requirements described in the regulations and provided a rationale that demonstrates that the State considered relevant evaluation criteria and provided a reasonable explanation for its allocation recommendations given those criteria.

Regulatory Requirements

NMFS's review of CDQ allocation recommendations submitted by the State is governed by 50 CFR 679.30(d) when such recommendations are made as part of recommendations about approval or disapproval of a proposed CDP:

NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

On January 17, 2003, NMFS approved 2003-2005 CDPs for APICDA, BBEDC, CBSFA, CVRF, NSEDC, and YDFDA and allocations of CDQ reserves for groundfish, prohibited species, halibut, and the crab species that were part of the CDQ Program on that date. At that time, NMFS determined that the 2003-2005 CDPs contained all of the information required by §679.30(a), that the CDPs were consistent with the "purpose and scope of the CDQ Program" at §679.1(e), and that the 65 communities represented by the CDPs were eligible to participate in the CDQ Program.

Although the State recommends approval of "all six Community Development Plans (CDPs) submitted to the State for the new 2005 crab species," the documents submitted by the CDQ groups requesting percentage allocations for EAI golden king crab and Adak red king crab are

amendments to the 2003-2005 CDPs and will be reviewed as such by NMFS for this IAD. Further information about this issue is provided later in the IAD.

Because the State's recommendations apply to both CDQ allocations and proposed amendments to the 2003-2005 CDPs, NMFS considered the following requirements of 50 CFR part 679 in making determinations in this IAD:

1. §679.30(a) requires that the State announce an application period for CDQ allocations.
2. §679.30(a) requires that qualified applicants apply for CDQ allocations by submitting a proposed CDP to the State during its CDQ application period. Qualified applicants are defined at §679.2.² For this IAD, NMFS will determine whether qualified applicants applied for the 2005 allocations of EAI golden king crab and Adak red king crab by submitting proposed amendments to their 2003-2005 CDPs to the State during its application period.
3. §679.30(b) requires the State to hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of the proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of the hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing. For this IAD, NMFS will determine whether the State held a public hearing to obtain comments on the proposed amendments to the 2003-2005 CDPs in accordance with the requirements at §679.30(b).
4. §679.30(c) requires the State to consult with the Council before the State submits its recommendations about CDQ allocations and proposed CDPs to NMFS. For this IAD, NMFS will determine whether the State consulted with the Council before it submitted its recommendations about the 2005 crab CDQ allocations and approval of proposed amendments to the 2003-2005 CDPs to NMFS.
5. §679.30(d) requires the State to transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations. In its findings, the State must make determinations about whether each proposed CDP meets all applicable requirements of 50 CFR part 679. For this IAD, NMFS will determine whether the State transmitted proposed amendments to the 2003-2005 CDPs along with its recommendations, findings, and rationale for its CDQ allocation recommendations and whether the State made determinations that the proposed amendments met all applicable requirements of 50 CFR part 679.

² The term "qualified applicant" for purposes of the CDQ Program is defined at §679.2 as a local fishermen's organization or a local economic development organization that, (i) represents an eligible community or group of eligible communities; (ii) is incorporated under the laws of the State of Alaska or under Federal law; and (iii) has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

6. Because NMFS is reviewing proposed amendments to the 2003-2005 CDPs, NMFS must determine whether the 2003-2005 CDPs, if amended as proposed by the CDQ groups, would continue to provide the information required to be contained in a CDP by §679.30(a) and would continue to be consistent with the goals and purpose of the CDQ Program at §679.1(e).

7. Finally, under §679.30(d), NMFS must determine that, in making its recommendations, findings, and rationale, the State demonstrated that it considered relevant evaluation criteria and provided a reasonable explanation for its 2003-2005 crab CDQ allocation recommendations given those criteria.

Determinations about the State's Recommendations

Pursuant to 50 CFR part 679, I make the following determinations about the State's recommendations as submitted in its July 14, 2005, letter from Governor Murkowski and described in the "CDQ Team's Final Recommendations" dated June 22, 2005, and I provide my rationale for these determinations.

1. Did the State announce an application period as required by §679.30(a)?

Appendix 2 to the State's July 14, 2005, letter, contains three different letters dated August 16, 2004, and addressed to "Dear Interested Party." The first letter dated August 16, 2004, is the first page of Appendix 2. The second and third letters dated August 16, 2004, are on the first page of the application packets for the 2006-2008 CDP applications and the 2005 Crab Addendum CDP application. The first letter dated August 16, 2004, stated that two application packets were sent to each CDQ group. A copy of mailing labels and e-mails in Appendix 2 indicate that the State also sent the application packets to representatives of each of the 65 communities currently participating in the CDQ Program. The third letter dated August 16, 2004, which is included in the 2005 Crab Addendum CDP application packet, stated that the application period for the 2005 crab CDQ allocations opened on October 1, 2004, and closed on November 1, 2004. In Appendix 2 to the State's July 14, 2005, letter to NMFS, the State provided copies of public notices announcing the application period that it placed in the Anchorage Daily News, Juneau Empire, Nome Nugget, Bristol Bay Times, Dutch Harbor Fisherman, and Tundra Drums and on the State's website. *Based on this information, I determine that the State did announce an application period for the 2005 crab CDQ allocations as required by §679.30(a).*

2. Did qualified applicants submit applications for CDQ allocations to the State as required by §679.30(a)?

On page 2 of its June 22, 2005, letter to Governor Murkowski regarding the CDQ Team's final allocation recommendations (Appendix 1), the State wrote that "[D]uring this application period, the CDQ Team received six CDPs requesting allocations of the two new crab species for the 2005 Crab CDP allocation cycle." The State forwarded to NMFS seven binders, one each from APICDA, BBEDC, CVRF, NSEDC, and YDFDA and two binders from CBSFA. The binders from five CDQ groups are titled "2005 Crab Addendum." The binder from NSEDC is titled "Application for Community Development Quota Program." Each of these applications

bears a State of Alaska, Department of Commerce stamp indicating that the applications were received by the State on or before the State's November 1, 2004, deadline.

APICDA, BBEDC, CBSFA, CVRF, NSEDC, and YDFDA all are operating under CDPs approved by NMFS for 2003 through 2005. When these CDPs were approved on January 17, 2005, NMFS determined that each of the CDQ groups were qualified applicants because they are local economic development organizations that meet the definition of qualified applicants at §679.2. No revisions have been made to the 2003-2005 CDPs since January 17, 2005, that have changed (1) the eligible communities participating in each CDQ group, (2) the fact that all of the CDQ groups are incorporated as non-profit corporations under the laws of Alaska, and (3) the fact that the board of directors of each CDQ group is composed of at least 75 percent resident fishermen of the community or group of communities. No such revisions to the 2003-2005 CDPs are proposed in the applications submitted to the State by the six CDQ groups.

The eligibility status of each of the 65 communities participating in the 2003-2005 CDPs and represented by the CDQ groups submitting applications for the 2005 crab CDQ allocations recently was confirmed by Congress in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (H.R.3, 109th Cong., Title X, Subtitle B, Sec. 10206, 2005, enacted). This legislation, which was signed by the President on August 10, 2005, confirms that the 65 communities that are listed in the 2003-2005 CDPs are eligible to participate in the CDQ Program.

Based on this information, I determine that APICDA, BBEDC, CBSFA, CVRF, NSEDC, and YDFDA are qualified to apply for the 2005 crab CDQ allocations of EAI golden king crab and Adak red king crab and that each of the six CDQ groups submitted an application for these allocations to the State as required by §679.30(a).

3. Did the State hold a public hearing as required by §679.30(b)?

In Appendix 2 to its July 14, 2005, letter to NMFS, the State provided copies of several documents related to public hearings it held on the 2005 crab CDQ allocations and the 2006-2008 groundfish, prohibited species, halibut, and crab CDQ allocations.³ These documents include (1) a September 10, 2004, letter to each of the CDQ groups notifying the groups of the November 30, 2004, public hearing in Anchorage; (2) a December 1, 2004, letter to each of the CDQ groups notifying the groups of the additional public hearings that the State held on December 15, 16, and 17, 2004, in Anchorage; and (3) copies of public notices about both the November and December 2004 public hearings that were published in the Anchorage Daily News, Juneau Empire (notice for December 2004 hearing only), Nome Nugget, Bristol Bay Times, Dutch Harbor Fisherman, and Tundra Drums and on the State's website. The public notices identified that the hearings were about both the 2005 crab CDQ allocations and the 2006-2008 multispecies CDQ allocations.

In Appendix 3 to its July 14, 2005, letter to NMFS, the State provided transcripts from the November 30, 2004, public hearing and the December 15 through December 17, 2004, public

³ The 2006-2008 groundfish, prohibited species, halibut, and crab CDQ allocations also may be referred to by NMFS in this IAD as the 2006-2008 multispecies CDQ allocations.

hearings. The transcript of the November 30, 2004, hearing indicates that teleconference hook-ups were provided in St. Paul, Nome, Unalaska, Dillingham, and Bethel. At the beginning of the hearing, Commissioner Blatchford stated that the hearing was about “the 2006-2008 CDP, and 2005 crab, CDP Application cycle.” Each of the CDQ groups provided an overview that generally described the communities they represented; the board of directors and managing organization for the CDQ group; current social and economic conditions in their communities; investments, projects, and employment programs that the group had undertaken in current and past CDQ allocation cycles; and plans for the future. These presentations generally constituted an overview of much of the information in the current 2003-2005 CDPs and the proposed 2006-2008 CDPs. Two groups (YDFDA and CBSFA) specifically mentioned the 2005 crab CDQ allocations in their presentations. However, most of the presentations focused on the allocations of groundfish, prohibited species, halibut, and crab for the 2006-2008 allocation cycle.

At the conclusion of the CDQ groups’ presentations at the November 30, 2004, public hearing, the State provided an opportunity for public comment. No comments were received from people via the teleconference hook-ups. One person provided public testimony in Anchorage. In addition, a statement by Commissioner Blatchford on page 82 of the transcript of the November 30, 2004, public hearing indicates that the State provided copies of the executive summaries from the proposed CDPs at the hearing and that the State would provide copies upon request to anyone who was not able to get a copy at the hearing. However, the transcript does not indicate whether executive summaries of both the 2005 crab CDQ allocation applications and the proposed 2006-2008 CDPs were provided at the meeting.

Based on this information, and my own attendance at the November 30, 2004, public hearing, I determine that the State held a public hearing to obtain comments on the 2005 allocations of EAI golden king crab and Adak red king crab, and that the State provided reasonable public notification of the hearing dates and locations. I also determine that the November 30, 2004, hearing covered the substance and content of the 2003-2005 CDPs and provided the public with the opportunity to comment on the 2005 crab CDQ allocations. Finally, I determine that the State did not provide sufficient information for NMFS to make a determination about whether the State made available for public review prior to the hearing all State materials pertinent to the 2005 crab CDQ allocations. However, I also determine that this deficiency in the information submitted by the State is not, on its own, a reason to disapprove the State’s 2005 crab CDQ allocation recommendations. NMFS has no indication from public comment at the hearing, or from any other source, that any person was unable to obtain the required information about the 2005 crab CDQ allocations prior to the public hearing.

4. Did the State consult with the Council as required by §679.30(c)?

In Appendix 4 to its July 14, 2005, letter to NMFS, the State provided copies of several documents related to its consultation with the Council about the 2005 allocations of EAI golden king crab and Adak red king crab at the Council’s April 2005 meeting. These documents include (1) a March 31, 2005, letter from the State to Stephanie Madsen, Chair of the Council, summarizing the State’s 2006-2008 multispecies CDQ allocation recommendations and 2005 crab CDQ allocation recommendations; (2) an April 11, 2005, letter from the Council to Governor Frank H. Murkowski about the State’s consultation with the Council at the Council’s

April 2005 meeting; and (3) a partial transcript of the State's April 8, 2005, consultation with the Council. *Based on this information, and my own attendance at the Council meeting while the State's consultation occurred, I determine that the State consulted with the Council about its recommendations for the 2005 crab CDQ allocations and associated amendments to the 2003-2005 CDPs before the State submitted those recommendations to NMFS for approval, as required by §679.30(c).*

The State described its consultation with the Council on page 5 of its June 22, 2005, rationale. In that discussion, the State wrote:

“More specifically, concern was expressed relating to the way the CDQ program standards and evaluation criteria are applied by the CDQ Team in its evaluation of CDPs and development of the allocation recommendations. The Council also expressed concern regarding the ability of the CDQ groups to understand the most important factors for consideration and relative weighting of the criteria in each new allocation cycle.”

In the next paragraph, the State wrote “[M]any of the issues raised during this consultation were previously addressed in Amendment 71 passed by the Council in June of 2002. However, for reasons beyond the control of the State, much of Amendment 71 has not yet been codified into regulations.”

The Council's recommendations for revisions to regulations governing the CDQ allocation process were made through its recommendations about Issue 1, Issue 2, Issue 4, and Issue 5 in the Amendment 71 analysis. For Issue 1, the Council recommended that NMFS continue to make CDQ allocation recommendations through an administrative process, which is the process that is currently described in NMFS regulations and the process that is now being used to consider the State's 2005 crab CDQ allocation recommendations. For Issue 2, the Council recommended that a 3-year allocation cycle be adopted in NMFS regulations. For Issue 4, the Council recommended that the State and NMFS continue to make periodic, competitive allocations among the CDQ groups. For Issue 5, the Council recommended that essentially the same evaluation factors currently in State regulations, and being used by the State in this 2005 crab CDQ allocation process, be added to federal regulations. The Council's recommendations for the CDQ allocation process under Amendment 71 generally reflect the CDQ allocation process that the State followed in developing its 2005 crab CDQ allocation recommendations. The fact that NMFS has not made these revisions in its regulations does not prevent the State from providing CDQ allocation recommendations and rationale that address what the State identified as the Council's concern: the ability of the CDQ groups to understand the most important factors for consideration and relative weight of these factors.

5. Did the State transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations as required by §679.30(d), and did the State make determinations about whether the proposed amendments to the 2003-2005 CDPs met all applicable requirements of 50 CFR part 679?

On July 14, 2005, NMFS received a letter from the State, with attachments, that contained the State's recommendations about approval of "all six Community Development Plans (CDPs) submitted to the State for the new 2005 crab species" and percentage allocations among the six CDQ groups for the 2005 CDQ reserves for EAI golden king crab and Adak red king crab. The July 14, 2005, letter further stated that the "state's findings and rationale in support of these recommendations are contained in the enclosed appendices." Appendix 1 to the July 14, 2005, letter contains the June 22, 2005, "Final 2005 Crab CDQ allocation recommendations" with the State CDQ Team's findings and rationale supporting its recommendations. The July 14, 2005, letter from Governor Murkowski stated that on June 24, 2005, "he concurred with the CDQ Team's 2005 Crab CDQ recommendations, findings, and rationale." The July 14, 2005, letter also stated that the "six 2005 CDPs have been fully reviewed by the State," and that "[E]ach of the six CDPs met the requirements of 50 C.F.R. 679 and 6 AAC 93."⁴

The State refers to the applications for the 2005 crab CDQ allocations as "CDPs" in its July 14, 2005, letter and its June 22, 2005, findings and rationale. However, on page 2 of its August 16, 2004, application packet, the State wrote that the "CDQ groups may submit an Addendum Application to the 2003-2005 CDPs to request CDQ allocations for EAI golden king crab and Adak red king crab added to the CDQ program started in 2005." On page 3 of the application packet, the State instructed the CDQ groups to "provide a detailed set of binder instructions on where these documents are to be included in the 2003-2005 CDPs."

Based on the information submitted by the State in its July 14, 2005, letter to NMFS, I determine that the State did transmit proposed revisions to the 2003-2005 CDPs, its recommendations for approval of these proposed revisions, its recommendations for 2005 allocations of EAI golden king crab and Adak red king crab among the CDQ groups, and the findings and rationale supporting these recommendations to NMFS as required by §679.30(d). I also determine that the State made a determination that the information submitted by the six CDQ groups to the State meets the requirements of 50 CFR part 679 as required by §679.30(d). Finally, I determine that the State notified the CDQ groups that the applications for the 2005 allocations of EAI golden king crab and Adak red king crab were amendments to the 2003-2005 CDPs.

6. If amended as proposed, would the 2003-2005 CDPs continue to provide the information required to be contained in a CDP by §679.30(a) and continue to be consistent with the goals and purpose of the CDQ Program at §679.1(e)?

The State forwarded to NMFS seven binders, one each from APICDA, BBEDC, CVRF, NSEDC, and YDFDA and two binders from CBSFA. These binders constituted the CDQ groups' applications for allocations of the 2005 CDQ reserves for EAI golden king crab and Adak red king crab. For reasons described in paragraph (5) above, NMFS is considering these applications as proposed amendments to the 2003-2005 CDPs.

⁴ On page 13 of this IAD, NMFS identifies a comment on page 8 of the State's rationale that indicates that the State has some concerns about whether APICDA's "CDP" is consistent with §679.1(e). However, it is unclear from this comment whether the State is referring to the proposed amendments to APICDA's 2003-2005 CDP for the 2005 crab allocations or is referring to APICDA's proposed 2006-2008 CDP.

NMFS interprets its regulations at §679.30 for review of amendments to the 2003-2005 CDP in light of decision 03-0022 issued by NMFS's Office of Administrative Appeals (OAA) on November 26, 2004 (OAA 03-0022). This decision was affirmed by NMFS on December 7, 2004. OAA 03-0022 states that the "general CDQ regulations of §679.30 should be construed in light of the goals and purpose of the CDQ program stated in §679.1(e)," but that the language of §679.1(e) is not "a substantive requirement that each CDQ project in itself must be intended to achieve the goals and purpose of the program." Therefore, a CDP on the whole must be consistent with the goals and purpose of the CDQ Program and any changes to an approved CDP must not cause the CDP as a whole to become inconsistent with the goals and purpose of the CDQ Program.

The applications generally contained proposed revisions, deletions, and additions to executive summaries; description of investments and employment; descriptions of target fisheries; fishing plans; budgets; and additions of draft contracts with business partners. The applications for APICDA, BBEDC, NSEDC, and YDFDA contain proposed revisions, additions, and deletions to text currently contained in the 2003-2005 CDP. In addition, BBEDC, NSEDC, and YDFDA provided specific instructions for how to incorporate the proposed amendments into the 2003-2005 CDPs, as requested in the State's application packet. However, the applications for CBSFA and CVRF do not clearly indicate that they intended to amend their 2003-2005 CDP. Neither application provides specific instructions about amending the 2003-2005 CDP and some of the information in the applications indicate that the CDQ group might be basing its amendments on information submitted to the State at the same time in their proposed 2006-2008 CDPs rather than on information in the 2003-2005 CDPs.

The applications submitted by APICDA, BBEDC, CBSFA, NSEDC, and YDFDA do not contain any new proposed CDQ projects. The application submitted by CVRF contains descriptions of nine CDQ projects, but only one of them, a non-profit training project, appears to be a CDQ project that is not contained in CVRF's 2003-2005 CDP. None of the proposed amendments would remove information from the 2003-2005 CDPs that formed the basis of NMFS's January 17, 2003, determinations that the 2003-2005 CDPs contained all of the information required by §679.30(a) or that the 2003-2005 CDPs were consistent with the goals and purpose of the CDQ Program at §679.1(e). In addition, none of the proposed amendments would revise or add information to the 2003-2005 CDPs that would change NMFS's January 17, 2003, determination that the 2003-2005 CDPs were consistent with §679.1(e).

After review of the information submitted by the six CDQ groups in their applications for the 2005 crab CDQ allocations, I determine that, if the 2003-2005 CDPs were amended as proposed in these applications, the 2003-2005 CDPs would continue to meet the information requirements at §679.30(a) and would continue to be consistent with the goals and purpose of the CDQ Program at §679.1(e). However, if NMFS were approving the State's 2005 crab CDQ allocation recommendations, I would consult with each CDQ group before actually amending its 2003-2005 CDP to ensure that any revisions to the group's CDP did not conflict with amendments approved by NMFS between November 1, 2004, and today.

7. Did the State consider relevant evaluation criteria and provide a reasonable explanation for its 2005 crab CDQ allocation recommendations given those criteria?

The State's findings and rationale for its 2005 crab CDQ allocation recommendations are described in the June 22, 2005, letter from Commission Blatchford to Governor Murkowski. This document describes the evaluation criteria⁵ considered by the State in making its 2005 crab CDQ allocation recommendations and provides the State's findings and explanation for its recommendations. This document will subsequently be referred to as the State's rationale.

(i) Did the State consider relevant evaluation criteria as a basis for its 2005 crab CDQ allocation recommendations?

On page 3 of the State's rationale, the State wrote that it considered the CDQ program standards in 6 AAC 93.017 and all 20 evaluation factors set forth in 6 AAC 93.040(b) "when reviewing the proposed CDPs."⁶ In addition, in the first paragraph of page 4 of its rationale, the State wrote that it "the CDQ Team's allocation recommendation focused on" a subset of these program standards and evaluation factors. NMFS assumes that the term "focused on" for purposes of competitive evaluation of the CDQ groups means that the State based its 2005 crab allocation recommendations on this subset of program standards and evaluation factors. The State also wrote, in the second paragraph on page 4, that when the sum of allocation requests exceed 100%, the State applies 6 AAC 93.040(g), which requires the State to "seek to maximize the benefits of the CDQ program to the greatest number of participating communities."⁷

NMFS regulations at 50 CFR 679.30 describe the process that the State must follow in making its allocation recommendations and identify the CDP as the document that must be submitted by the applicants to the State and NMFS to apply for CDQ allocations. The regulations include specific information that must be supplied in the CDP, but they do not specify that only the information in the CDP may be used as a basis for CDQ allocations. Specific guidelines setting forth the criteria the State should use in evaluating the CDQ groups or in making CDQ allocation recommendations are not contained in the MSA, the FMPs, or 50 CFR Part 679. Therefore, the State appropriately developed program standards, evaluation factors, and the guidance for its allocation recommendations and implemented them under 6 AAC 93.

The program standards and evaluation factors in State regulations include population, social and economic conditions; past performance of a CDQ group in using allocations to provide benefits to eligible communities consistent with the goals and purpose of the program; plans described in the CDP to provide benefits to eligible communities in the future; and the conduct of the CDQ fisheries. These program standards and evaluation factors are related to the information that must be submitted in the CDPs under Federal regulations and are relevant to the State's responsibility to recommend appropriate CDQ allocations to the eligible CDQ communities. *Therefore, I determine that the program standards in 6 AAC 93.017, the evaluation factors in 6*

⁵ The State refers to program standards and evaluation factors in its regulations. When NMFS uses the more general term "evaluation criteria" in this IAD, it is referring to the combination of all criteria used by the State as a basis for its allocation recommendations, including program standards and evaluation factors.

⁶ A copy of the State regulations at 6 AAC 93 is in Attachment 2 to this IAD.

⁷ The quoted text is from 6 AAC 93.040(g), see Attachment 2 to this IAD.

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AAC 93.040(b), and the direction of 6 AAC 93.040(g) are relevant evaluation criteria for the State to consider as a basis for its 2005 crab CDQ allocation recommendations.

(ii) Did the State provide a reasonable explanation for its 2005 crab CDQ allocation recommendations?

On pages 3 and 4 of the State’s rationale, the State described the program standards and evaluation factors at 6 AAC 93.017 and 6 AAC 93.040(b) it relied on (1) to make determinations about the “proposed CDPs,” and (2) as a basis for its 2005 crab allocation recommendations. Although the State refers to “CDPs” and “proposed CDPs,” the applications for 2005 crab CDQ allocations are proposed amendments to the 2003-2005 CDPs. The proposed 2006-2008 CDPs that were submitted by the CDQ groups to the State are applications for the 2006-2008 multispecies CDQ allocations.

In the fourth paragraph on page 3 of the State’s rationale, the State found that all six CDPs demonstrated consistency with two of the nine program standards (#3 and #4), and four of the 20 evaluation factors (#7, #8, #18, and #19), so these program standards and evaluation factors “were given little weight in the allocation recommendation.” In the last paragraph on page 3, the State identified two additional evaluation factors on which it placed little weight. One of these factors is 6 AAC 93.040(b)(7), which addresses “the coordination or cooperation with other applicants or CDQ groups on CDQ projects.”⁸ However, NMFS notes that in the State’s more detailed explanation of its allocation recommendations for the individual CDQ groups, the State specifically identifies concerns with cooperation between APICDA (page 9) and CBSFA (page 12) on CDQ projects in St. George and St. Paul. Identification of these concerns in the part of the rationale that explains the State’s recommended percentage allocations for APICDA and CSBFA implies that this evaluation factor played some role in the State’s allocation recommendations. However, the State does not explain what it means by “little weight” and what role, if any, the program standards and evaluation criteria it identified as having little weight actually played in the State’s 2005 crab allocation recommendations.

In the first paragraph on page 4 of the State’s rationale, the State wrote that its allocation recommendation “focused on” program standards “(1)-(2), and (5)-(9)” and evaluation factors “(1)-(6), (9), (11-17).” The State then wrote that it “roughly distilled” the program standards and evaluation factors it focused on into three broad categories it used to competitively evaluate each group. These three broad categories included the extent to which each CDQ group: (1) sought to maximize the benefits of the CDQ Program to the greatest number of participating communities, (2) did well in terms of overall performance, and (3) proposed a CDP that was consistent with the goals and purposes of the CDQ Program.

In the third paragraph on page 4 of the State’s rationale, the State explained that it “measured overall performance by reviewing to what extent each CDQ group: (1) expanded investment in (a) profitable Bering Sea fishing vessels and quota, and (b) onshore processing projects that were sustainable; (2) provided measurable benefits to their residents through in-region projects (including employment, education, and training programs); and (3) achieved these results with

⁸ The State’s citation for this program standard in paragraph 5 on page 3 of its rationale is incorrectly identified as 6 AAC 93 017(7).

reasonable administrative expenses (including compensation of senior level management as compared to other non-profit corporations, for-profit corporations, and high level government officials in Alaska.).”

In the fifth paragraph on page 4 of the State’s rationale, the State provided two additional broad categories that evaluate to what extent: (1) each CDP is geared toward transition to a self sufficient, regionally based, fisheries related economy; and (2) each group has promoted, to the greatest extent possible, conservation-based fishing of their CDQ allocations.

NMFS concludes from the explanation provided on pages 3 and 4 of the State’s rationale that the State divided the seven program standards and 14 evaluation factors that it said it focused on in making its 2005 crab allocation recommendations into the following five general categories:

- (1) The extent to which each CDQ group sought to maximize the benefits of the CDQ Program to the greatest number of participating communities;
- (2) The extent to which each CDQ group did well in terms of overall performance;
- (3) The extent to which each CDQ group proposed a CDP that was consistent with the goals and purposes of the CDQ Program;
- (4) The extent to which each CDP is geared toward transition to a self sufficient, regionally based, fisheries related economy; and
- (5) The extent to which each group has promoted, to the greatest extent possible, conservation-based fishing of their CDQ allocations.

The State then provided an explanation of its 2005 crab CDQ allocations of EAI golden king crab and Adak red king crab among the six CDQ groups on pages 6 through 18 of the State’s rationale. For each CDQ group, the State first listed information about the CDQ group’s population, unemployment rate, median household income, and poverty rate. Based on this information, the State provided conclusions about the standard of living and economic need for the region represented by each CDQ group. The State used three general terms to describe its conclusions: high, mid-range, and low. For BBEDC and CBSFA, the State also provided an additional statement about the adverse affect low salmon prices and a downturn in the opilio crab harvests on the CDQ communities represented by those two CDQ groups.

The State then provided conclusions about the following evaluation criteria for each CDQ group: past performance of offshore investments; past performance of employment, education, and training projects; the potential for in-region projects; quality of the long range transition plan; administrative expenses; the design of milestones for determining progress of projects; business plans; investments in the crab sector; and employment benefits with industry partners. Relative to the other CDQ groups, the State provided a much more lengthy explanation of its conclusions that APICDA was not performing as well as the other five CDQ groups with respect to these evaluation criteria. However, for the other five CDQ groups, the State provided relatively short, fairly general, and almost identical conclusions with respect to each CDQ group’s performance

for several evaluation criteria. For example, in the sections addressing each CDQ group on pages 6 through 18 of the State's rationale, the State wrote that BBEDC, CBSFA, CVRF, NSEDC, and YDFDA all had in-region projects "that appear to have the likelihood of developing a self-sustaining local fisheries economy and a viable schedule for transition from reliance on an allocation to self-sufficiency." In another example, the State wrote that each of these five CDQ groups had in-region projects that "appear to be designed with realistic measureable milestones for determining progress for their projects." The State also provided identical paragraphs about each of the five CDQ groups, except APICDA, with regard to their future plans. For the evaluation criteria related to past performance of existing offshore CDQ projects State provided conclusions using the terms "successful" and "very successful" for each of the CDQ groups, except APICDA. For APICDA, the State concluded that its "past performance of existing offshore CDQ projects have, for the most part, been successful," but that "APICDA, in contrast with the other five CDQ groups, has not been actively investing in additional for-profit investments..." (page 6 of the State's rationale). For the evaluation criteria related to past performance of in employment, education, and training, the State provided conclusions using the terms "successful" and "very successful" for each of the six CDQ groups.

After summarizing its conclusions about each CDQ group's with respect to population; standard of living; economic need; past performance of offshore investments; past performance of employment, education, and training projects; the potential for in-region projects; quality of the long range transition plan; administrative expenses; and the design of milestones for determining progress of projects, the State provided its specific percentage allocation recommendations for the 2005 allocations of EAI golden king crab and Adak red king crab. Then, for all of the CDQ groups except APICDA, the State wrote that it recommended the particular allocation based on the "factors and findings above." For APICDA, the State did not write that its 2005 crab allocation recommendations were based on "factors and findings above," but rather "[T]he State's 2005 allocation recommendations for the two new species of crab are consistent with APICDA's current opilio crab CDQ allocation percentage." (page 10 of the State's rationale).

For all six of the CDQ groups, the State concluded each section with additional statements listing specific evaluation criteria that the State considered in making its recommendation about the 2005 crab allocations. The statements for each CDQ group are as follows:

APICDA (page 10): "The State took into consideration APICDA's business plan and investment in the crab sector in making this recommendation."

BBEDC (page 11): "In making this recommendation, the CDQ Team considered BBEDC's business plan, investment in the crab sector, the success of their business agreements, their commitment to employment agreements for their residents with industry partners, and long-range business plan for self-sufficiency." Later on page 11, the State also wrote "[T]he State took into consideration BBEDC's business plan, investment in the crab sector, and employment benefits with industry partners in making this recommendation."

CBSFA (page 13): "In making this recommendation, the CDQ Team considered CBSFA's business plan, investment in the crab sector, the success of their business agreements, their

commitment to employment agreements for their residents with industry partners, and long-range business plan for self-sufficiency.”

CVRF (page 15): “In making this recommendation, the State took into consideration CVRF’s business plan, investment in the sector, and employment and training benefits provided by vessels harvesting and processing crab.” Again, in the same paragraph the State then wrote: “[I]n making this recommendation, the CDQ Team considered CVRF’s business plan, investment in the crab sector, the success of their business agreements, their commitment to employment agreements for their residents with industry partners, and their long-range business plan for self-sufficiency.” Later on page 15, the State also wrote “[T]he State took into consideration CVRF’s business plan, investment in the crab sector, and employment benefits provided by industry partners in making this recommendation.”

NSEDC (page 17): “In making this recommendation, the CDQ Team considered NSEDC’s business plan, the success of their business agreements, investment in the crab sector, and employment benefits provided by industry partners harvesting and processing crab.”

YDFDA (page 18): “The State took into consideration YDFDA’s business plan, investment in the crab sector, and employment benefits provided by industry partners in making this recommendation.”

A general concern that NMFS identified in reviewing the State’s rationale is that much of the rationale provided for its recommendations for the 2005 crab CDQ allocations is identical to the State’s March 14, 2005, rationale supporting its initial, combined recommendations for 2005 crab and 2006-2008 multispecies CDQ allocations. In its rationale for its 2005 crab CDQ allocations, the State removed specific reference to the 2006-2008 allocation recommendations, added text to document the April 2005 Council consultation, and added further explanation for its allocation recommendations for APICDA. However, the State provided the same explanation of the evaluation criteria it considered, much of the same conclusions for each CDQ group, and the same references to “the CDPs” or the “proposed CDPs”.

This approach to segregate its final 2005 crab CDQ allocation recommendations and rationale from the combined initial recommendations and rationale creates confusion about what documents the State reviewed and considered as a basis for its 2005 crab allocation recommendations. For example, in the third full paragraph on page 7 of the its rationale, the State wrote “[T]he CDQ Team is concerned with the overall strategy expressed in APICDA’s CDP for this allocation cycle based on the group’s past performance and future plans. ... This lack of forward thinking reflects on the fact that the 2005 Crab CDP is very similar to prior CDPs for other allocation cycles.” The CDP “for this allocation cycle” is the 2003-2005 CDP and the application submitted by APICDA for the 2005 crab CDQ allocations is a proposed amendment to the 2003-2005 CDP. This paragraph is almost identical to the fourth paragraph on page 7 of the State’s March 14, 2005, initial allocation recommendations and rationale for the combined 2005 crab allocations and 2006-2008 multispecies CDQ allocations.⁹ The primary difference is that, in the sentence that starts out “[T]his lack of forward thinking....,” the State

⁹ The State’s initial recommendations and rationale are in a March 14, 2005, letter from Edgar Blatchford to Governor Murkowski. A copy of this letter is in Exhibit A of the State’s July 14, 2005, letter to NMFS.

refers to “the 2005 Crab CDP” in its rationale for the 2005 crab CDQ allocations, but refers to the “2006-2008 CDP” in its combined initial allocation recommendations. The revision of the document referenced between the initial and final recommendations without making any other significant changes in the conclusion creates confusion about whether the State’s rationale for its 2005 crab allocation recommendations were based on the documents submitted as applications for the 2005 crab CDQ allocations, on the 2003-2005 CDP as a whole, or on the proposed 2006-2008 CDPs.

My review of the State’s rationale for its recommendations for the 2005 allocations of EAI golden king crab and Adak red king crab identified the following deficiencies:

(1) The State’s rationale does not demonstrate that the State applied all of the evaluation criteria it said (on pages 3 and 4 of the State’s rationale) that it focused on in its allocation recommendation.

The State provided a lengthy explanation of how it initially considered all program standards and evaluation factors in 6 AAC 93, identified two program standards and six evaluation factors that it gave little weight to in its allocation recommendations, then categorized the remaining seven program standards and 14 evaluation factors into five broad categories of evaluation criteria that it focused on in making its 2005 crab allocation recommendations. The five broad categories of evaluation criteria that NMFS identified in the State’s rationale are listed on page 14 of this IAD. The State wrote on page 4 of its rationale that “the CDQ Team’s allocation recommendation focused on the remaining factors set forth in 6 AAC 93.040(b)(1)-(6), (9), (11)-(17) and program standards in 6 AAC 93.017(1)-(2), and (5)-(9).” Therefore, because the State explained how it categorized the evaluation criteria that it focused into five broad categories, NMFS expected the State’s rationale to provide the State’s evaluation of each of the six CDQ groups with respect to these five broad categories of evaluation criteria. However, the State’s explanation of its allocation recommendations for each CDQ group, on pages 6 through 18 of its rationale, addressed population; standard of living; economic need; past performance of offshore investments; past performance of employment, education, and training projects; the potential for in-region projects; quality of the long range transition plan; administrative expenses; the design of milestones for determining progress of projects; business plans; investments in the crab sector; and employment benefits with industry partners. Some of these evaluation criteria clearly are components of two of the five broad categories of evaluation criteria that the State said, on page 4 of its rationale, that it considered in making its 2005 crab CDQ allocation recommendations (i.e. the extent to which each CDQ groups did well in terms of overall performance, and the extent to which each CDP is geared toward transition to a self sufficient, regionally based, fisheries related economy.) However, it does not appear that the State’s rationale addresses each of the five broad categories of evaluation criteria that it said it focused on.

One of the five broad categories of evaluation criteria that the State said, on page 4 of its rationale, that it focused on was the extent to which each CDQ group sought to maximize the benefits of the CDQ Program to the greatest number of participating communities. The State’s rationale provided its conclusions about population, standard of living, and economic need for each CDQ group. However, in its rationale, the State did not list the number of communities represented by each CDQ group or provide specific conclusions about how its 2005 crab

allocation recommendations would maximize benefits of the program to the greatest number of participating communities. As a result, it is unclear in the State's rationale whether or how it addressed the first of the five broad categories of evaluation criteria that it said it focused on.

Another of the five broad categories was the extent to which each group has promoted, to the greatest extent possible, conservation-based fishing of their CDQ allocations. However, the State did not address, in its explanation of its 2005 crab allocation recommendations, whether or how the CDQ groups had promoted conservation-based fishing. If the performance of all six CDQ groups with respect to conservation-based fishing was similar, if this evaluation factor was not directly relevant to allocation the 2005 crab CDQ reserves, or if this evaluation criteria did not assist the State in competitively evaluating the groups in relation to each other, then the State should have included this evaluation factor on the list of factors that the State placed little weight on in its evaluation. Because the State did not include this evaluation factor in the list of evaluation factors that it placed little weight on, the State's record indicates that this factor played some role in the State's 2005 crab allocation recommendations, but the State provided no explanation of that role.

Another of the five broad categories of evaluation criteria that the State said it focused on was the extent to which each CDQ group proposed a CDP that was consistent with the goals and purposes of the CDQ Program. On page 6 of the State's rationale, it wrote that "each of the six proposed CDPs met the requirements of 6 AAC 93 and 50 C.F.R. 679." NMFS interprets §679.30(d) to require that the CDP be consistent with the goals and purpose of the CDQ Program at §679.1(e). Although the State did provide a general statement about the consistency of the "six proposed CDPs" with 50 CFR part 679, the State did not specifically provide a determination about the impact of the proposed amendments to the 2003-2005 CDPs on the consistency of those CDPs with respect to the goals and purpose of the CDQ Program at §679.1(e). Making such a determination about the consistency of "the CDPs" was one of the five broad categories of evaluation criteria that it said it focused on in making its 2005 crab allocation recommendations. If all the proposed amendments to the 2003-2005 CDPs were consistent with the goals and purpose of the CDQ Program, then the State should have included this evaluation factor on the list of evaluation factors that the State placed little weight on in its evaluation of the CDQ groups. Again, because the State did not include this evaluation factor in the list of evaluation factors that it placed little weight on, the State's record indicates that this factor played some role in the State's 2005 crab allocation recommendations, but its record provided no explanation of that role.

Although the State generally asserted that all six of the proposed CDPs were consistent with 50 CFR part 679, on page 8 of its rationale the State wrote that "[I]n the CDQ Team's view, APICDA's long-range business plan sets forth in the CDP submitted for this allocation cycle will have difficulty in accomplishing the purpose of the CDQ program which is to invest in income producing commercial fisheries business investments that will result in a self-sustaining fisheries related economy in western Alaska." This statement presents contradictory opinions or conclusions by the State with respect to the consistency of APICDA's CDP with the goals and purpose of the CDQ Program at §679.1(e) that are not explained in the State's record.

The evaluation criteria that the State did focus on in its rationale on pages 6 through 18 all are legitimate evaluation criteria that can be linked to the program standards and evaluation factors in State regulations. NMFS regulations do not instruct the State about the evaluation criteria to consider or how to weigh or balance its conclusions about the CDQ groups' performance against the evaluation criteria to determine its allocation recommendations. The deficiency identified by NMFS is not that the State based its 2005 crab allocation recommendations on inappropriate evaluation criteria. Rather, the State presented a lengthy explanation of the evaluation criteria it focused on in making its CDQ allocation recommendations and then followed that explanation with conclusions about evaluation criteria that appear to be only a subset of those that it said it considered. The list of the five broad categories of evaluation criteria that the State said it considered on page 4 is not the same list of evaluation criteria that it provided discussion and conclusions about on pages 6 through 18. Therefore, the State's rationale does not demonstrate that the State applied all of the evaluation criteria that it said that it focused on in its allocation recommendation.

(2) The State did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group.

The State's 2005 crab CDQ allocation recommendations first provided a series of general conclusions about each CDQ group's population, standard of living, economic need, and past performance. Next, the State presented its specific percentage allocation recommendations for the 2005 allocations of EAI golden king crab and Adak red king crab. Finally, the State concluded its rationale for each CDQ group by stating that its 2005 crab CDQ allocation recommendations were "based on the factors and findings above," followed by a list of additional factors that the State considered in making its 2005 crab allocation recommendations. (These additional factors are listed on pages 15 and 16 of this IAD). For BBEDC, the State provided two different statements of the specific factors it considered in making its 2005 crab CDQ allocation recommendations (page 11 of the State's rationale), and for CVRF, the State provided three different statements about the specific factors it considered (page 15 of the State's rationale).

The State's rationale provided no information about the importance of population, standard of living, economic need, past performance, and future plans evaluation criteria relative to the more specific evaluation criteria of business plans, investments in the crab sector, and employment benefits. In addition, the organization of rationale, separately presenting both the general conclusions and a list of specific factors considered, also implies that there is something more important or relevant about the evaluation criteria that the State listed after its statement of its percentage allocation than the conclusions it summarized prior to the statement of its percentage allocation. The State wrote that it considered these specific factors, but it doesn't explain whether it further narrowed the evaluation criteria it considered for the 2005 crab allocations or how these considerations are related to its specific percentage allocation recommendations.

The State also did not provide any information about how it combined its various conclusions about each CDQ group to determine its percentage allocation for that CDQ group, with the possible exception of APICDA. The State did recommend a lower crab allocation for APICDA

than the other five groups, which is consistent with the State's conclusions about APICDA's low population, high standard of living, low economic need, poor past performance, and deficient future plans. The State recommended the same percentage allocation for 2005 crab for CBSFA and NSEDC (21%) and the same percentage allocation for 2005 crab for BBEDC and CVRF (18%). However, the State's rationale does not explain specifically why a 21% allocation is appropriate for both CBSFA and NSEDC, why an 18% allocation is appropriate for both BBEDC and CVRF, or why a 14% allocation is appropriate for YDFDA. How did the State use its conclusions about the population, standard of living, economic need, past performance, and future plans of the CDQ groups to develop its specific percentage allocation recommendations? What was similar about BBEDC and CVRF that led to the 18% allocation recommendation? What was different about BBEDC and CVRF versus NSEDC and CBSFA that resulted in a 3% difference in allocations among these groups? What led to the 14% allocation recommendation for YDFDA versus the other five CDQ groups? Finally, why did the State recommend identical percentage allocations of EAI golden king crab and Adak red king crab for each CDQ group for 2005?

On page 4 of the State's rationale, the State wrote that 6 AAC 93.040(g) guides the State to maximize the benefits of the CDQ Program to the greatest number of participating communities. The State also specifically listed this regulation as one of the five broad categories of evaluation criteria that it used to competitively evaluate the CDQ groups. However, the State's rationale does not explain how it balanced this requirement with the other evaluation criteria it applied to determine its allocation recommendations for each CDQ group. For example, the State did not explain why it recommended one of the highest 2005 crab CDQ allocation to CBSFA (21%), which is a CDQ group that represents one community, while it also recommended an allocation of 21% to NSEDC, a CDQ group that represents 15 communities, or an allocation of 18% to CVRF and BBEDC, CDQ group's that represent 20 and 17 communities respectively. The State listed a number of positive conclusions about CBSFA's performance relative to the other CDQ groups and listed several factors that the State considered in making its allocation recommendation, but it did not explain how it used its conclusions to determine the specific percentage allocations it recommended for CBSFA relative to the other CDQ groups.

The State provided one very specific reason why it recommended that APICDA receive an 8% allocation of the EAI golden king crab CDQ reserve. APICDA currently is allocated 8% of the opilio crab CDQ reserve. However, in drawing this link, the State did not explain why it was appropriate for APICDA to receive the same percentage allocation of EAI golden king crab as it currently receives for opilio crab. In addition, the State did not explain how this fact was combined with all of the other conclusions that it drew about APICDA's population, standard of living, economic need, past performance, and future plans to result in the 8% allocation recommendation. Was the current percentage allocation of opilio the primary factor in its 2005 crab allocation recommendations or were the other factors more important? The State's rationale does not provide this explanation.

NMFS is not asserting that the State has made the wrong recommendations about the 2005 crab CDQ allocations or that the State's recommendations cannot be supported. However, the explanation necessary to provide that support is not contained in the rationale that the State submitted to NMFS on July 14, 2005. To provide adequate support for its recommendations, the

State must explain how it combined or balanced the conclusions it reached in its competitive evaluation of the CDQ groups to determine the specific percentage allocations it recommended for each CDQ group. Failure to provide such an explanation makes it impossible for NMFS to understand why the State determined it appropriate for each CDQ group to receive the specific allocations recommended by the State.

For the reasons described above, I determine that the State did not provide a reasonable explanation for its recommendations about the 2005 crab CDQ allocations, as required by 50 CFR 679.30(d). Specifically, the State's rationale does not demonstrate that the State applied all of the evaluation criteria that it said that it focused on in its allocation recommendation, and the State did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group.

Requests for Reconsideration and Other Supplemental Information

On page 5 of its rationale, the State reported that it provided an opportunity for the CDQ groups to request reconsideration of the State's combined initial recommendations for the 2005 crab and the 2006-2008 multispecies CDQ allocations. The State wrote that:

Two of the CDQ groups filed a request for reconsideration with the State. See Exhibit A. The CDQ Team found that neither of these requests for reconsideration revealed any factual or legal errors in the initial allocation recommendations that would warrant an adjustment to the CDQ Team's initial allocation recommendations. See Exhibit B.

Exhibit A to the State's 2005 crab allocation recommendations contained requests for reconsideration from APICDA and CVRF, correspondence between the State and APICDA, and the State's initial allocation recommendations. Exhibit B contains the State's response to CVRF and the State's response to APICDA.

CVRF's request for reconsideration, dated March 31, 2005, addresses only the State's initial recommendations for the 2006-2008 multispecies CDQ allocations. Therefore, NMFS does not consider this request or the State's response further for purposes of this IAD, which is focused only on the State's 2005 crab allocation recommendations.

APICDA's April 1, 2005, request for reconsideration addresses the State's draft initial allocation recommendations in the State's February 9, 2005, letters to the CDQ groups and Commissioner Blatchford's March 14, 2005, letter to Governor Murkowski. The majority of APICDA's challenges are focused on the State's 2006-2008 allocation recommendations and rationale, particularly its initial recommendations for 2006-2008 allocations of pollock, Pacific cod, yellowfin sole, and Bristol Bay red king crab. On page 21 of its request for reconsideration, APICDA addresses the State's initial recommendation for EAI golden king crab, but does not differentiate between the State's recommendations for 2005 versus 2006-2008. APICDA did not challenge the State's final recommendations for the 2005 crab allocations in the ten day reconsideration period provided by the State following release of its June 22, 2005, final 2005

crab allocation recommendations. However, NMFS finds that APICDA's request for reconsideration does address the State's 2005 crab allocation recommendations because most of the State's rationale for its final 2005 crab CDQ allocation recommendations was part of its initial rationale for the combined 2005 crab and 2006-2008 multispecies allocations. In addition, the State's final 2005 percentage allocation recommendations for EAI golden king crab and Adak red king crab are the same as its initial percentage allocation recommendations for these two crab species for 2006-2008.

APICDA's request for reconsideration (dated April 1, 2005), and its response to the State (dated May 31, 2005), provide numerous challenges to the State's decision making process and its conclusions. These challenges range from disagreement with specific facts in the State's rationale (population), presentation of information rebutting conclusions that the State made in its rationale for which the State had not presented any facts, challenges to conclusions that the State made with respect to APICDA's past performance, challenges to conclusions the State made about relative performance among the CDQ groups, and challenges to the State's decisions about what evaluation criteria to consider most important.

Additionally, in its request for reconsideration, APICDA asserted that the State relied on confidential information in evaluating the CDPs and in developing its CDQ allocation recommendations. APICDA correctly stated that NMFS advised the State that it may not rely on confidential information as a basis for its CDQ allocation recommendations because procedural due process requires that applicants for CDQ allocations be able to examine the information used by NMFS in making its CDQ allocation decisions. If the State were to rely on confidential information as the basis for its CDQ allocation recommendations, the State could not provide that information in its rationale and could not reveal that information to the CDQ groups and NMFS could not use that information as a basis for its determinations.

On page 2 of its April 1, 2005 request for reconsideration, APICDA wrote that "[D]iscussions of the groups' 'past performance' and 'generat[ion of] capital,' [and] their 'steady income streams[s]'" make it plain that the Team consulted with groups' balance sheets which they have all treated as proprietary information or trade secrets under 6 AAC 93.040." APICDA provided additional examples of confidential documents that it believes the State must have relied on to develop the conclusions about past performance. On page 5 of its April 22, 2005, response to APICDA's request for reconsideration, the State wrote that APICDA submitted its first request for information on March 1, 2005. The State released about 2,500 pages of documents to APICDA on March 11, 2005. However, the State does not identify the specific documents it released. On March 18, 2005, APICDA requested that "[I]n the interest of due process, we ask that the Department furnish all information, confidential and nonconfidential, not already provided to APICDA, on which it based any part of its recommendations." The State and APICDA exchanged numerous e-mails and letters discussing APICDA's request, primarily debating the terms "used" and "relied on" and the process through which APICDA must make its request for information from the State. On page 8 and 9 of its April 22, 2005, response to APICDA, the State wrote "[T]he State gathered and considered information as required by state and federal regulations. If NMFS finds fault in the information the State considered and relied on in rendering the allocation recommendation, NMFS has the authority to disapprove these recommendations."

In its July 14, 2005, letter to NMFS, the State wrote that it “arrived at these recommended quota allocations following a thorough review of each application, prior-period financial and compliance reviews, public hearings with each applicant, consultation with the North Pacific Fishery Management Council, and a determination of consistency with applicable state and federal regulations.” Although this letter identifies “prior-period financial and compliance reviews” as documents that the State considered in developing its 2005 crab allocation recommendations, the State’s rationale does not specifically mention these documents nor does the State indicate that it based its conclusions about any of the CDQ group’s past performance on these specific documents. In paragraph 2 on page 2 of its rationale, the State wrote that “the CDQ Team received six CDPs requesting allocations of the two new crab species for 2005 crab CDP allocation cycle.” However, throughout most of the rest of the State’s rationale, it refers to “the CDPs” and “the proposed CDPs” as the basis for its allocation recommendations. As identified earlier in this IAD, it is unclear to NMFS which documents the State reviewed as a basis for its 2005 crab CDQ allocation recommendations and rationale: the proposed amendments to the 2003-2005 CDPs, which were the applications for the 2005 crab CDQ allocations, or the proposed 2006-2008 CDPs which appear to have been the primary basis for the State’s March 14, 2005, initial allocation recommendations.

The State responded to APICDA’s questions and assertions about the information on which the State relied in making its allocation recommendations by stating “the CDQ Team needs to be able to review publicly available documents to properly assess factors such as past performance.” And “[I] have attached to this letter just a sample of publicly available information that supports the portions of the CDQ Team’s allocation recommendation letter to the Governor that you cited in your letter.”¹⁰ In addition, on page 9 of its April, 22, 2005, response to APICDA, the State asserts that nothing in federal regulations “precludes the State from considering information that is ‘confidential’ under state law” and that “federal regulations give NMFS the authority to disapprove the State’s allocation recommendations if they do not comply with the applicable federal requirements.” On pages 20 through 53, the State refutes, point by point, the assertions made by APICDA in its request for reconsideration. However, the State does not specifically identify the facts or documents that support each of the conclusions that the State made in the competitive evaluation of the CDQ groups that it describes on pages 6 through 18 of its rationale. The State’s response to APICDA refutes assertions made by APICDA, but does not provide NMFS with sufficient information and analysis to determine if each of the conclusions reached by the State in its rationale and used as a basis for its 2005 crab CDQ allocation recommendations are based on confidential information. Therefore, NMFS can neither confirm nor refute APICDA’s assertion that the State relied on confidential information. In addition, regardless of whether the State actually relied on confidential information or not, the State’s response does not provide sufficient additional information about its rationale to address the deficiency noted by NMFS in this IAD: that the State did not provide an explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group.

¹⁰ March 29, 2005, letter from Chris Poag, Alaska Department of Law, to Leslie Longenbaugh, re: Public Records Request dated March 18, 2005. Exhibit 16 to the State’s April 22, 2005, response to APICDA.

APICDA also disputed the population figure that the State cited for APICDA in its rationale. This issue was raised by APICDA on page 9 of its April 1, 2005, request for reconsideration. However, after arguing that this fact was incorrect, APICDA accepted the population figure used by the State for APICDA, but rebutted how the State used population as an evaluation criterion. APICDA also rebuts the figures the State used for the unemployment rate and the conclusions that the State made about APICDA's income and poverty rates, standard of living, and economic need. As described earlier in this IAD, the State cited statistics for population, unemployment rate, median household income, and poverty rate and drew conclusions from these statistics about each CDQ group's standard of living and economic need. However, the State did not explain what role these statistics or conclusions played in the 2005 crab CDQ allocations the State recommended for each CDQ group.

APICDA specifically challenged the State's 2005 crab allocation recommendations on pages 21 and 22 of its April 1, 2005, request for reconsideration, presenting several reasons why it thought that the State should allocate 50% of the EAI golden king crab allocation to APICDA. Specifically, APICDA stated that "the Team should recognize Atka's proximity to the resource and Atka's intended use of the CDQ to develop the local economy." In addition, APICDA asserted that the State's EAI golden king crab allocation recommendations "would give a significant share to CDQ groups that have CDQ harvesting and processing arrangements with catcher-processors," which APICDA believed was in conflict with earlier State policy. These assertions are disagreements with how the State balances and weighs the evaluation criteria it considers to determine its CDQ allocation recommendations. If the State adequately responds to a CDQ group's disagreements and provides a reasonable explanation for its recommendations, then NMFS's standard of review does not allow NMFS to substitute its judgment for the State's judgment about how to apply specific evaluation criteria to information about the CDQ groups to determine its CDQ allocation recommendations. As noted earlier in this IAD, while I determined that the State considered relevant evaluation criteria, I also determined that the State did not adequately explain how it used these evaluation criteria and conclusions about the CDQ groups' performance to determine its 2005 crab CDQ allocation recommendations.

Based on my review of the issues raised by APICDA and the State's response, I determine that the State's response to APICDA's request for reconsideration does not provide adequate additional information about the State's rationale for its 2005 crab CDQ allocation recommendations to address the deficiencies noted above in this IAD.

Conclusion

Based on the findings and rationale above, NMFS initially disapproves the State's recommendations for percentage allocations of 2005 crab because the State did not provide a reasonable explanation for its recommendations as required by 50 CFR 679.30(d). Specifically, the State's rationale does not demonstrate that the State applied all of the evaluation criteria that it said that it focused on in its allocation recommendation, and the State did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group. Although the State followed the process required in NMFS regulations for its 2005 crab allocation recommendations, and it considered relevant evaluation criteria, the deficiencies in its

explanation of how it applied those evaluation criteria to determine its specific percentage allocations recommendations for EAI golden king crab and Adak red king crab for 2005 resulted in a rationale that is not reasonable.

This IAD becomes a final agency action on October 19, 2005, unless, before that date, it is appealed to the NMFS Office of Administrative Appeals. The State and any or all of the CDQ groups may appeal this IAD. Because 50 CFR 679.43(a) excludes IADs issued under §679.30(d) from the administrative appeals procedures at §679.43, any appeal of this IAD must be made in accordance with the enclosed administrative appeals procedure set forth in Attachment I. The appeal must be received by October 19, 2005. Please read Attachment I for a more detailed description of the procedures and rules that govern the appeal of this IAD. For additional information, you may contact the Office of Administrative Appeals by calling (907) 586-7258.

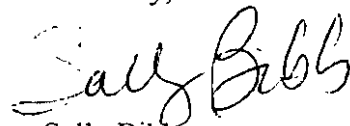
Options and Recommendations

This IAD will become final agency action if no administrative appeal is filed or, if an administrative appeal is filed, the Office of Administrative Appeals and Regional Administrator uphold this IAD. If either of these situations occur, no percentage allocations will exist to allocate the two new crab CDQ reserves among the CDQ groups for the 2005 crab fishing year.

If this IAD becomes final agency action, the State may resubmit recommendations and rationale that address the deficiencies identified in this IAD. NMFS will review any new recommendations and rationale following the same procedure used for review of the recommendations submitted on July 24, 2005. If the State decides not to resubmit 2005 allocation recommendations for these two crab species, NMFS will recommend that the Council initiate rulemaking to establish percentage allocations of EAI golden king crab and Adak red king crab among the six CDQ groups. If rulemaking to establish the percentage allocations is pursued, it is unlikely that the rulemaking could be completed prior to the end of the 2005 season for EAI golden king crab on May 15, 2006. However, such a rulemaking may still be necessary to establish the percentage allocations of the two new crab CDQ reserves for 2006 and beyond.

If this IAD is appealed by the State or any of the CDQ groups, NMFS may approve a settlement that is agreed to among all six CDQ groups and the State, as described in the attached procedure for an administrative appeal of this IAD. If such a settlement is agreed to by the State and all of the CDQ groups and is approved by NMFS, the administrative appeals process directs the appeals officer to dismiss all appeals. The percentage allocations established through the settlement would become final agency action on the CDQ allocations. This settlement option would provide the opportunity to establish percentage allocations of the two new crab CDQ reserves without requiring NMFS to approve or disapprove the State's rationale.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Bibb".

Sally Bibb
CDQ Program Coordinator
Sustainable Fisheries Division

Attachment 1 (administrative appeals process)

Attachment 2 (State of Alaska CDQ Program regulations)

cc: William Noll, Commissioner

Alaska Department of Commerce, Community, and Economic Development

Greg Cashen, CDQ Program Manager, ADCCED

NMFS Office of Administrative Appeals

North Pacific Fishery Management Council

Attachment 1

NMFS's Administrative Appeals Process



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

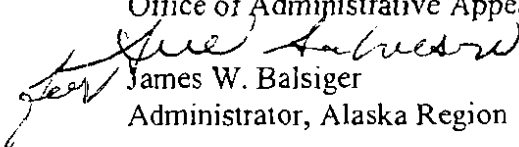
National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 31, 2005

MEMORANDUM FOR: Ed Hein, Chief Appeals Officer
Office of Administrative Appeals

FROM:  James W. Balsiger
Administrator, Alaska Region

SUBJECT: Administrative Appeals Process for the Initial Administrative
Determination about the State of Alaska's Recommendations for
2005 Allocations of Two Species of Crab under the Western
Alaska Community Development Quota Program

Attached is the administrative appeals procedure that Alaska Region staff from the Sustainable Fisheries Division, the Office of Administrative Appeals, and NOAA General Counsel developed as appropriate for appeals of an initial administrative determination about the State of Alaska's recommendations for allocations of Eastern Aleutian Islands golden king crab and Adak red king crab for 2005. Allocations of these two crab species were added to the Community Development Quota (CDQ) Program in 2005 under the crab rationalization program.

This administrative appeals procedure was developed because 50 CFR part 679, at §679.43(a), excludes LADs issued under §679.30(d) from the administrative appeals procedures at §679.43. Allocations of quota among CDQ groups are made under §679.30(d).



Procedure for an Administrative Appeal of the Initial Administrative Determination
about the State of Alaska's Recommendations for Percentage Allocations of
Two Species of Crab for 2005

Administrative Appeals Process

The following procedure will apply to any appeal of NMFS's initial administrative determination (IAD) about the State of Alaska's recommendations for percentage allocations of Eastern Aleutian Islands golden king crab and Adak red king crab for 2005.

Who May Appeal

A CDQ group identified in the IAD or the State of Alaska may appeal the IAD.

Submission of an Appeal

An appellant may appeal this IAD by submitting an appeal in writing to:

National Marine Fisheries Service (NMFS)
Office of Administrative Appeals
P. O. Box 21668
Juneau, AK 99802

or delivering the appeal to:

National Marine Fisheries Service (NMFS)
Federal Building
709 West 9th St., Room 453
Juneau, Alaska

or transmitting the appeal by facsimile to (907) 586-9361.

Additional information about appeals may be obtained by calling (907) 586-7258.

Scope of Review for Appeals of NMFS Determinations about CDQ Allocations

The Office of Administrative Appeals will limit its review to the record developed by NMFS to support the IAD, written arguments in support of an appeal, and written responses by parties to the appeal. There will be no discovery or evidentiary hearings during the administrative appeals process.

Timing of Appeals

The appeal must be filed not later than 4:30 p.m. Alaska Time on [INSERT DATE 30 days after the date the IAD is issued].

Address of Record

NMFS will establish as the address of record the address used by the appellant in initial correspondence to NMFS concerning the appeal. Notifications of all actions affecting the appellant after establishing an address of record will be mailed to that address, unless the appellant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the appellant's actual address has changed without notification to NMFS.

Statement of Reasons for Appeal

Appellants must timely submit a full written statement in support of the appeal. The appellate officer will review only the issues stated in the appeal. All issues not set out in the appeal will be waived.

Participants in the Appeal Process

If one or more CDQ groups or the State of Alaska file an appeal of the IAD, the Office of Administrative Appeals will join all the CDQ groups as parties to the appeal. The State of Alaska and NMFS also will be provided an opportunity to submit a written response to any appeal.

Authority of the Appellate Officer

The appellate officer is vested with general authority to issue a written decision to uphold or reverse the IAD.

Settlement

If an appeal is submitted by any or all CDQ groups or by the State of Alaska, NMFS may approve a settlement that would establish percentage allocations of the 2005 CDQ reserves for EAI golden king crab and Adak red king crab among the CDQ groups identified in the IAD, if such settlement is agreed to and signed by a representative of each of the CDQ groups and the State of Alaska. If such a settlement is approved by NMFS, the OAA shall dismiss all appeals of the IAD and the percentage allocations approved through the settlement will constitute final agency action.

Appellate Officers' Decisions

The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record of the proceedings and that all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Unless reversed, modified, or remanded by the Regional Administrator as provided

below, an appellate officer's decision takes effect 30 days after it is issued and, upon taking effect, is the final agency action for purposes of judicial review.

Review by the Regional Administrator

An appellate officer's decision is subject to review by the Regional Administrator.

- (1) The Regional Administrator may affirm, reverse, modify, or remand the appellate officer's decision before the 30-day effective date of the decision.
- (2) The Regional Administrator may take any of these actions on or after the 30-day effective date by issuing a stay of the decision before the 30-day effective date. An action taken under (1) of this section takes effect immediately.
- (3) The Regional Administrator must provide a written explanation why an appellate officer's decision has been reversed, modified, or remanded.
- (4) The Regional Administrator must promptly notify the appellant(s) of any action taken under (1) of this section.
- (5) The Regional Administrator's decision to affirm, reverse, or modify an appellate officer's decision is a final agency action for purposes of judicial review.

Attachment 2

State of Alaska CDQ Program Regulations



CHAPTER 093 WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

6 AAC 93.010 PURPOSE OF REGULATIONS

The purpose of this chapter is to implement the state's role in the Western Alaska Community Development Quota Program (CDQ Program) for the Bering Sea and Aleutian Islands Area under 50 C.F.R. 679.

History - F.R. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 35 44 33.020 (11)

6 AAC 93.012 REFERENCES TO FEDERAL LAW

In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision as revised as of June 9, 1999

History - F.R. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 35 44 33.020 (11)

6 AAC 93.015 CDQ TEAM; RESPONSIBILITIES; LEAD STATE AGENCY.

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

(1) the commissioner of the Department of Community and Economic Development, or one or more of the commissioner's representatives from that department, including one person to act as CDQ manager;

(2) the commissioner of the Department of Fish and Game, or one or more of the commissioner's representatives from that department; and

(3) one or more other state employees or state officials designated jointly by those commissioners, if additional members of the team would be beneficial

(h) The Department of Community and Economic Development is the lead agency. CDQ program material submitted under this chapter shall be submitted to the lead agency.

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

(1) solicit submittals of community development plans (CDP) from eligible communities,

(2) review and evaluate proposed CDPs;

(3) make recommendations regarding CDQ allocations and changes to allocations,

(4) review and make recommendations regarding amendments to approved CDPs,

(5) monitor the performance of each CDQ group in achieving the group's milestones and objectives in its CDP,

6 AAC 93.020 CDQ APPLICATION PERIOD

(a) Within a reasonable time before an application period is to begin, the CDQ team shall

(1) establish the application period by scheduling a deadline for receipt of proposed CDPs from qualified applicants and by scheduling a projected time frame for

(A) initial evaluation;

(B) holding a public hearing to discuss all CDPs received;

(6) seek to ensure consistency between the CDQ program standards in 6 AAC 93.017 and a CDQ group's activities that are subject to this chapter and 50 C.F.R. 679; and

(7) based on reports and other information obtained under this chapter, prepare and submit to the governor, for the governor's review, approval, and necessary action, the state's annual progress report described in 50 C.F.R. 679.30(g) and (h)

(d) The governor will, in the governor's discretion, delegate in writing the responsibility for carrying out one or more duties of the governor under this chapter to the CDQ team.

History - F.R. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 35 44 33.020 (11)

Editor's Note - The mailing address for submitting material under this chapter is: CDQ Team, Office of the Commissioner, Department of Community and Economic Development, P.O. Box 110803, Juneau, Alaska 99811-0803

6 AAC 93.017 CDQ PROGRAM STANDARDS.

To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1)

(9) of this section, as applicable. The CDQ team shall determine whether

(1) a CDP provides specific and measurable benefits to each community participating in the CDP;

(2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;

(3) a proposed CDP has the support of all participating communities,

(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;

(5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project,

(6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;

(7) the CDQ group has minimized legal and financial risk,

(8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e), and

(9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats

History - F.R. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 35 44 33.020 (11)

and

(C) final review;

(2) publish a notice that announces the CDQ application period, states the allocation cycle, and states the deadline for submitting a proposed CDP; the notice must be published in at least one newspaper of general circulation in Western Alaska and in at least one newspaper of general circulation in the state, and



this section

(c) If, after publication of the notice under (a) of this section, the CDQ team determines that it is necessary to change the allocation cycle, the CDQ team shall notify all applicants and eligible communities and publish notice of the change.

Fishery - Eff 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151. Authority - Ak Const., art. III, sec. 1; Ak Const., art. III, sec. 24; 42 U.S.C. 12201 (1)

(3) mail a copy of the notice to each eligible community
(b) Except as provided in 6 AAC 93.075 (b), the deadline for submission of a proposed CDP set by (a)(1) of this section may not be less than 14 days after publication of the notice under (a) of

6 AAC 93.025 REQUIREMENTS FOR SUBMITTING A PROPOSED CDP.

(a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant must submit to the CDQ team, on or before the deadline set under 6 AAC 93.020, a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including

(1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2, this statement must be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;

(2) a statement as to whether the applicant is also the managing organization for the proposed CDP;

(3) a statement that each community participating in the proposed CDP is an eligible community as defined in 50 C.F.R. 679.2;

(4) with the list of communities participating in the CDP required by 50 C.F.R. 679.30(a)(1)(iv),

(A) the population of each community;

(B) the economic conditions in each community; and

(C) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;

(5) for each member of the applicant's board of directors, a letter of support or election results from the board member's eligible community and a statement of support from the governing body of each community participating in the proposed CDP, the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;

(7) for an applicant that is also a managing organization,

(A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and

(B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement

of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide

information regarding any benefits to the state or the United States;

(10) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall

(A) provide copies of any contractual service arrangements dealing with legal, lobbying, audit, accounting, allocation management, investment research, fund management, and similar services;

(B) provide copies of profit sharing arrangements,

(C) provide copies of funding and financing plans; and

(D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;

(11) a copy of the investment policies that the applicant will follow for

(A) for-profit CDQ projects;

(B) infrastructure CDQ projects,

(C) fund and cash management CDQ projects; and

(D) other applicable CDQ projects;

(12) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that

(A) identifies the project as an active or proposed CDQ project;

(B) describes the project's normal scope of operations; and

(C) indicates whether an active project should be classified as a core or noncore CDQ project;

(13) a milestone table that sets out specific and measurable objectives for each CDQ project and dates for achieving each objective;

(14) budgets, including

(A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;

(B) an annual budget listing detailed expenses for each CDP project for the first year of the proposed CDP; and

(C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;

(15) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with 6 AAC 93.050; and

(16) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under 6 AAC 93.040(c)

(b) An eligible community may not

(1) submit more than one proposed CDP during a single CDQ application period; or

(2) participate in more than one CDP, this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the



International Pacific Halibut Commission and 50 C.F.R. 679.30.

(c) Except for circumstances that the CDQ team finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.025 (12).

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126, am 8/13/94, Register 131, am 1/1/98, Register 144, am 8/19/99, Register 151 Authority - Ak Const., art III, sec 1 Ak Const., art III, sec 24 AS 11.33.020 (11)
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

6 AAC 93.030 INITIAL EVALUATION OF PROPOSED CDPs.

6 AAC 93.035 PUBLIC HEARING

(a) The CDQ team shall schedule at least one public hearing on all pending complete proposed CDPs, providing for a teleconference site in each geographical area that is subject to a proposed CDP.

(b) The CDQ team shall provide notice of the date and location of a public hearing

(1) to each applicant whose proposed CDP is the subject of the hearing;

(2) through newspaper publication; in addition, notice

6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPs [COMPLETE CDP APPLICATIONS]

(a) After the public hearing under 6 AAC 93.035, the CDQ team shall evaluate all complete proposed CDPs to determine whether the CDPs are consistent with the standards in 6 AAC 93.017 and meet the applicable requirements of this chapter and 50 C.F.R. 679.

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP

- (1) the number of participating eligible communities and
 - (A) the population of each community; and
 - (B) the economic conditions in each community,

(2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP,

(3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;

(4) the degree, if any, to which each CDQ project is expected to generate

(A) capital or equity in the local fisheries economy or infrastructure; or

(B) investment in commercial fishing or fish processing operations;

(5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;

(6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing,

(7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects,

(8) the experience of the applicant's industry partners, if

(a) The CDQ team shall perform an initial evaluation of a proposed CDP submitted under 6 AAC 93.025 to determine whether the CDP is complete. Within 15 days after a proposed CDP is received, the CDQ team shall notify the CDP applicant of any information needed to make the CDP complete. The applicant must submit the needed information within 10 days after being notified by the CDQ team. If, after the initial evaluation period, the CDQ team finds that additional information is needed for completeness, the applicant will have 10 days after notification to provide the information.

(b) After the initial CDP evaluation, the CDQ team shall schedule a public hearing under 6 AAC 93.035 as required by 50

C.F.R. 679.30(b).

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126, am 8/13/94, Register 131, am 1/1/98, Register 144, am 8/19/99, Register 151 Authority - Ak Const., art III, sec 1 Ak Const., art III, sec 24 AS 11.33.020 (11)

may be provided through other media, and

(3) to any other person the CDQ team believes will be interested in a pending CDP.

(c) A public hearing under this section must be recorded and transcribed. The transcript of the public hearing will be made available to the public, upon request, at the same time that the transcript is submitted under 6 AAC 93.045

(d) Repealed 8/19/99.

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126, am 8/13/94, Register 131, am 1/1/98, Register 144, am 8/19/99, Register 151 Authority - Ak Const., art III, sec 1 Ak Const., art III, sec 24 AS 11.33.020 (11)

any;

(9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;

(10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;

(11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;

(12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;

(13) the applicant's ability to maintain control over each of its allocations,

(14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;

(15) the past performance of the applicant and the applicant's industry partners, as appropriate;

(16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025(a)(13),

(17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;

(18) the degree of participating community input in developing the proposed CDP;

(19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and

(20) comments provided by other agencies, organizations, and the public.



(c) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP either

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant; or

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(d) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(e) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (f) of this section,

6 AAC 93.045 RECOMMENDATIONS TO THE NMFS REGARDING PROPOSED CDPs

After making written findings under 6 AAC 93.040 regarding the complete proposed CDPs, the governor will

(1) forward the proposed CDPs to the NMFS with written findings, rationale, and recommendations for approval of

6 AAC 93.050 QUARTERLY AND ANNUAL REPORTS.

(a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team a quarterly report for each calendar quarter in which that group's CDP is in effect, and an annual report as described in

(d) of this section. Each quarterly report must be submitted by the deadline stated in (b) of this section and must contain the information required by (c) of this section

(b) A CDQ group shall submit a quarterly report to the CDQ team, to be received or postmarked on or before

(1) April 30 for a CDP in effect during the preceding January, February, or March,

(2) July 30 for a CDP in effect during the preceding April, May, or June;

(3) October 30 for a CDP in effect during the preceding July, August, or September, and

(4) January 30 for a CDP in effect during the preceding October, November, or December

(c) A quarterly report submitted under this section must

(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.

(f) Before the CDQ team recommends an apportionment of the quota under (e) of this section, it shall consult with the applicants that might be affected by the proposed apportionment. The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(g) In apportioning the quota of fishery resource under (e) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council regarding the proposed CDPs to be recommended by the governor for allocations and incorporate

any comments from the council into the written findings required under (c) of this section and 50 C.F.R. 679.30(d)

History - Eff. 11/18/92, Register 124, am. 4/10/93, Register 126, am. 8/13/94, Register 131, am. 1/1/98, Register 144, am. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. AS 11.31.020 (11)

proposed CDPs and CDQ allocations, and

(2) notify in writing each CDP applicant as to whether the applicant's proposed CDP was recommended to the NMFS for approval, including whether any reduction of allocation was recommended under 6 AAC 93.040.

History - Eff. 11/18/92, Register 124, am. 4/10/93, Register 126, am. 1/1/98, Register 144, am. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. AS 11.31.020 (11)

include

(1) information describing how, during the period covered by the report, the CDP group has met the milestones and objectives of the CDP as set out in the CDP;

(2) a year-to-date report of all CDQ harvesting and processing activities of the CDQ group;

(3) comprehensive financial statements if required by the CDQ team; a statement required under this paragraph must include, as applicable,

(A) a consolidated balance sheet;

(B) a consolidated income statement that clearly identifies, by CDQ project, revenue and expenditures;

(C) a cash flow statement; and

(D) financial statements for the CDQ group's subsidiaries;

(4) complete year-to-date data regarding training, education, and employment under the CDP, provided in a format specified by the CDQ team,

(5) minutes for any CDQ group board or directors meetings



that were held during the quarter, and

(6) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program, if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the report is due

(d) The quarterly reports submitted under this section for a calendar year are subject to an independent audit performed by a reputable accounting firm. The CDQ group's selection of an accounting firm is subject to the CDQ team approval. The independent audit constitutes a CDQ group's annual report and must be submitted by the CDQ group to the CDQ team, to be received or postmarked no later than May 31 of the year following the calendar year covered by the audit. The audit must include

(1) a report that indicates whether the CDQ group is meeting the milestones and objectives of the CDP as set out in its CDP, the CDQ group shall meet with an auditor to develop agreed-upon procedures for the content of this report;

(2) consolidated financial statements, reported according to generally accepted accounting principles and, if determined necessary by the CDQ team, supplemental schedules reporting the financial position and results of operations for each of the CDQ

group's consolidated for-profit subsidiaries classified in the CDP as a core CDQ project;

(3) a note to the financial statements in which the auditor details how financial results were determined and any other relevant information,

(4) a supplemental schedule detailing the CDQ group's general and administrative expenses;

(5) except for fund and cash management CDQ projects, a budget reconciliation between all CDQ projects and administrative budgets, and actual expenditures,

(6) a management report or letter, and

(7) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.

(e) In this section, "postmarked" means the

(1) United States Postal Service postmark,

(2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;

(3) the date the document is delivered to the CDQ team by facsimile; or

(4) the date the document is delivered to the CDQ team by electronic mail

History - ERF 11/18/92, Register 124, am 4/10/93, Register 126, am 8/13/94, Register 131, am 1/1/98, Register 144, am 8/19/99, Register 151. Authority - Ala. Const., art. III, sec. 1; Ala. Const., art. III, sec. 24. ~~24-24-330-20~~ (1)

Editor's Note - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.025.

6 AAC 93.055 AMENDMENTS TO AN APPROVED CDP.

(a) General requirements. A CDP is a working business plan that must be kept current. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment

(1) is consistent with the standards in 6 AAC 93.017, the group's investment policies submitted under 6 AAC 93.25(a)(11), and the requirements of 50 C.F.R. 679; and

(2) will affect the CDQ group's ability to meet the milestones and objectives in its CDP

(c) Substantial amendments. A substantial amendment to a CDP is subject to (f) and (h) of this section and 50 C.F.R. 679.30(g)(4). A substantial amendment requires the commissioner to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if a CDQ group intends to

(1) make a change described in 50 C.F.R. 679.30(g)(4)(iv),

(2) pursue a proposed CDQ project that will be classified in the amended CDP as a core CDQ project,

(3) add a new proposed CDQ project;

(4) make a substantial variation in the normal scope of operations for an active core CDQ project described under 6 AAC 93.025 (a)(12)(B); or

(5) engage in a CDQ activity that would result in an active noncore CDQ project being classified as a core CDQ project under 6 AAC 93.057.

(d) Technical amendments for noncore projects. A technical amendment under this subsection is subject to 50 C.F.R. 679.30(g)(5). If a CDQ group intends to pursue an activity described in this subsection, the group shall send a letter of notification to the CDQ manager, describing the activity and seeking a technical amendment to the CDP. With the letter of notification, the CDQ group shall include the information required by (b) of this section. An activity under this subsection is subject to (g) and (i) of this section and requires the CDQ manager to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). Subject to (g)(2) of this section, the CDQ manager will make a decision under this subsection within 10 days after a letter of notification is received. Notification under this subsection is required when a CDQ group intends to

(1) pursue a proposed noncore CDQ project that is clearly identified in the CDP text and budget, if the CDQ team advises the CDQ group that notification under this section is required, or

(2) make a substantial variation in the normal scope of operations of an active noncore CDQ project, if the variation will impact the CDQ project performance measures described in the milestone table submitted under 6 AAC 93.025 (a)(13),

(e) Other technical amendments. A technical amendment to a CDP is subject to 50 C.F.R. 679.30(g)(5). A technical

(1) pursue a proposed noncore CDQ project that is clearly identified in the CDP text and budget, if the CDQ team advises the CDQ group that notification under this section is required, or

(2) make a substantial variation in the normal scope of operations of an active noncore CDQ project, if the variation will impact the CDQ project performance measures described in the milestone table submitted under 6 AAC 93.025 (a)(13),

(e) Other technical amendments. A technical amendment to a CDP is subject to 50 C.F.R. 679.30(g)(5). A technical



approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to

amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for

- (1) make a change in its board of directors or key administrative staff;
- (2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025 (a)(10)(A);
- (3) add a harvesting or processing contract that is substantially similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract, or
- (4) make any other change that the CDQ team determines is technical in nature.
- (f) Review process for substantial amendments. The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:
 - (1) the CDQ team shall determine within 30 days whether the amendment
 - (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or
 - (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;
 - (2) if the CDQ team finds an amendment to be inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,
 - (A) the CDQ team shall notify the CDQ group; the group will have 10 days to respond with more information;
 - (B) within 10 days after the CDQ group's response is received, the CDQ manager shall repeat the review under (1) of this subsection until the CDQ manager recommends
- (h) *Recommendation for disapproval of a substantial*

amendment If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent with the standards, policies, or requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group, advising the group that it may request reconsideration under 6 AAC 93.090.

(i) Recommendation for disapproval of a technical amendment for a noncore project. If the CDQ manager finds that a technical amendment for a noncore project proposed under (d) of this

received, the CDQ team shall repeat the review under (1) of this subsection; and

(3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (h) of this section

(g) Review process for technical amendments for noncore projects. The CDQ manager shall use the following process in the review of a technical amendment for a noncore project proposed under (d) of this section.

(1) the CDQ manager shall determine within 10 days whether the amendment

(A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section, or

(B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;

(2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,

(A) the CDQ manager shall notify the CDQ group; the group will have five days to respond with more information;

(B) within 10 days after the CDQ group's response is received, the CDQ manager shall repeat the review under (1) of this subsection, and

approval of the amendment or makes a determination under (i) of this section.

section is inconsistent with the investment policies or federal requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. The CDQ group may request reconsideration of the CDQ manager's decision under 6 AAC 93.090.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1 Ak. Const., art. III, sec. 24, §§ 43, 53, 62 (11)

Editor's Note - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015

6 AAC 93.057 RECLASSIFICATION OF CORE AND NONCORE PROJECTS.

(a) If the annual progress report prepared by the CDQ team under 6 AAC 93.015 will address a CDQ project classified in the CDP as a noncore CDQ project that has been found by the CDQ team to meet the criteria for a core CDQ project in 6 AAC 93.000, the CDQ team may reclassify a noncore CDQ project as a core CDQ project in that report and shall request the CDQ group to seek a substantial amendment to its CDP under 6 AAC 93.055 (c). For the purposes of this subsection, the criteria in the definition of "core CDQ project" at 6 AAC 93.000 (13)(C)(i) may not be considered

(b) If a CDQ group believes that a project classified in the group's CDP as a core CDQ project should instead be classified as a noncore CDQ project, the CDQ group may petition the CDQ team to reclassify the project. A CDQ group may submit a petition under this subsection only between June 15 and August 15

(c) The CDQ team shall consider the following factors in its review of a petition submitted under (b) of this section:

(1) the maturity of the business cycle, the stability of management, and the profitability of the project;

(2) the success of the project in meeting the milestones and objectives in the CDP;

(3) whether the majority of activities of the project are occurring in, or in proximity to, an eligible CDQ community; and

(4) the overall impact the project has on the success of



6 AAC 93.060 SUSPENSION OR TERMINATION OF A CDP; DECREASE IN ALLOCATION.

(a) The governor will, in the governor's discretion, recommend to the NMFS in writing that a CDP be partially suspended, or terminated or that allocations under CDP be decreased if, as part of the annual progress report prepared under 6 AAC 93.015 or in response to an allegation under (c) of this section, the CDQ team notifies the governor that the CDQ team has determined that a CDQ group

(1) has failed to comply with

(A) this chapter; or

(B) 50 C.F.R. 679,

(2) has failed to meet its milestones or objectives; or

(3) appears unlikely to meet its milestones or objectives.

(b) Nothing in (a) of this section precludes the governor from including a recommendation for a decreased allocation with a recommendation for a partial suspension.

(c) If, at any time during the course of a CDP, the CDQ team is advised that a CDQ group has failed to comply with 50 C.F.R. 679 or with this chapter, the CDQ Team will send a written notice of the allegation to the CDQ group at the address on file at the department for the group. The CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the allegation. The CDQ team shall consider the CDQ group's written response, if any, in deciding whether to make a recommendation to the governor under (a) or (b) of this section. If the CDQ team decides to make a recommendation under (a) or (b) of this section, the CDQ team shall include the CDQ group's written response, if any, with the recommendation transmitted to the governor.

(d) Before sending the governor's recommendation under (a) or

(b) of this section to the NMFS, the CDQ team shall inform the CDQ group of the governor's decision. The CDQ group may request reconsideration of the governor's decision under 6 AAC

93.090.

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126, am 8/13/94, Register 131, am 1/1/98, Register 144, am 8/19/99, Register 151 Authority - Ak Const., art. III, sec. 1, Ak Const., art. III, sec. 24, AS 14.33.020 (11)

6 AAC 93.070 CONFIDENTIAL RECORDS

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 09.25.110 - 09.25.120 and are open to inspection by the public during regular office hours

(b) A participating community, applicant, CDQ group, or

6 AAC 93.080 REPORTING OF CDQ PROGRAM FISHERY HARVEST.

A buyer of fish that, under AS 16.05.690 and 5 AAC 39.130, is

(d) If the CDQ team approves a petition submitted under (b) of this section, the petition will be treated as a technical amendment that is recommended for approval by the NMFS under 50 C.F.R. 679.30(g)(5).

History - Ltr 8/19/99, Register 151 Authority - Ak Const., art. III, sec. 1, Ak Const., art. III, sec. 24, AS 14.33.020 (11) Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015

managing organization wishing to protect a record that was provided to the state under this chapter may file with the governor or CDQ team a written petition identifying the record

to be protected and showing good cause to classify the record as confidential. If, at the time of submission, a participating community, applicant, CDQ group, or managing organization wishes to protect a record being submitted under this chapter, the community, applicant, group, or organization shall mark the record as "confidential" and show good cause to classify the record as confidential.

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating community, applicant, CDQ group, or managing organization with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and

(2) the need for confidentiality outweighs the public interest in disclosure.

(d) If the governor or CDQ team determines that good cause exists under (c) of this section, the governor or CDQ team will, in writing, classify the records as "confidential" and restrict access to them.

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person other than the United States Secretary of Commerce, the North Pacific Fishery Management Council, the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor.

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126, am 1/1/98, Register 144, am 8/19/99, Register 151 Authority - Ak Const., art. III, sec. 1, Ak Const., art. III, sec. 24, AS 14.33.020 (11) Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015

6 AAC 93.075 GENERAL PROVISIONS

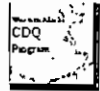
(a) The governor will, in the governor's discretion, consider other factors not identified in this chapter if those factors are relevant to the decision or recommendation in question.

(b) The governor will, in the governor's discretion, relax or reduce the notice requirements of 6 AAC 93.020 - 6 AAC

93.040 if the governor determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

History - Ltr 11/18/92, Register 124, am 4/10/93, Register 126 Authority - Art. III, Sec. 1, Ak Const. Art. III, Sec. 24, Ak Const.

required to record and report a purchase of fish shall also record and report the buyer's purchases of fishery resources that are harvested through a CDQ program. This shall be done in the manner required by AS 16.05.690 and 5 AAC 39.130 and other



6 AAC 93.090 RECONSIDERATION PROCESS.

(a) A CDQ group may submit to the CDQ team a request for reconsideration of a decision under 6 AAC 93.055 or a decision under 6 AAC 93.060. Subject to (e) of this section, the request for reconsideration must be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration must include additional information that was not provided for consideration in the initial decision.

(b) For reconsideration of a decision under (1) 6 AAC 93.055 (h), the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding a reconsideration decision;

(2) 6 AAC 93.055 (i), the CDQ manager shall review the additional information submitted with the request for reconsideration and make a reconsideration decision; or

(3) 6 AAC 93.060, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision

(c) Within 20 days after a request for reconsideration is received, notification to the CDQ group of the reconsideration decision will be made by

(1) the commissioner, for a decision under 6 AAC 93.055 (b),

(2) the CDQ manager, for a decision under 6 AAC 93.055 (i); or

(3) the governor, for a decision under 6 AAC 93.060
(d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the amendment, suspension, termination, or decrease in allocation. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ team determines that a participating community will be competitively or financially harmed by a delay in issuing the decision.

History - Eff. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 11/1/92, (11) Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.012.

6 AAC 93.900 DEFINITIONS.

In this chapter

(1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055, and that continues its status as a CDQ project;

(2) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679,

(3) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;

(4) "application period" means the time between the date of publication of the notice under 6 AAC 93.020 (a) and the forwarding of the final CDP recommendation to the NMFS,

(5) "CDP" means community development plan,

(6) "CDQ" means community development quota;

(7) "CDQ activity" means an activity pursued by the

CDQ group that is paid for, directly or indirectly, through CDQ assets;

(8) "CDQ asset" means property of a CDQ group;

(9) "CDQ liability" means a debt of a CDQ group;

(10) "CDQ manager" means the department employee designated by the commissioner;

(11) "CDQ team" means the state officials designated in or under 6 AAC 93.015,

(12) "commissioner" means the commissioner of the department,

(13) "core CDQ project" means a CDQ project that

(A) has a collective ownership by the applicant or CDQ group that is in excess of 49 percent;

(B) has a level of involvement by the applicant or CDQ group that demonstrates effective managing control, as determined by the CDQ team; or

(C) meets at least two of the following criteria:

(i) the applicant's or CDQ group's equity interest in the CDQ project constitutes at least 25 percent of the applicant's or group's assets;

(ii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;

(iii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets,

(iv) the CDQ project has been determined by the annual progress report prepared under 6 AAC 93.015 to not meet the milestones and objectives in the CDP for three consecutive years;

(v) the CDQ project receives funding from the applicant or CDQ group in a calendar year;

(14) "department" means the Department of Community and Economic Development;

(15) "fisheries-related" means to have a direct or indirect link to the commercial fisheries industry;

(16) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;

(17) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;

(18) "NMFS" means the federal National Marine Fisheries Service,

(19) "noncore CDQ project" means a CDQ project that is not a core CDQ project;

(20) "proposed CDQ project" means a CDQ project that is yet to be initiated;

(21) "substantial variation" means a significant change in the normal scope of operations of an active CDQ project as stated in the CDP; a "substantial variation" includes a change that could result in a determination of inconsistency with the standards in 6 AAC 93.017 and a change that could affect a CDQ group's ability to meet the milestones and objectives in the CDP

History - Eff. 11/18/92, Register 124, am. 4/10/93, Register 126, am. 8/13/94, Register 131, am. 1/1/98, Register 144, am. 8/19/99, Register 151. Authority - Ak. Const., art. III, sec. 1. Ak. Const., art. III, sec. 24. 11/1/92, (11) Editor's Notes - Definitions of other terms under 6 AAC 93 are found at 50 C.F.R. 679.2